NO. 15906

IN THE SUPREME COURT
OF
THE STATE OF HAWAII

JETON LEE ALLEN,	)	AR91-0017
	)	Original Case No.
Petitioner-Appellant,	)	91-00201
	)	
	)	APPEAL FROM THE
vs.	)	JUDGMENT FILED
	)	DECEMBER 20, 1991
IRWIN TANAKA, Administrative Director of the Court, State of Hawaii,	)	DISTRICT COURT OF THE FIRST CIRCUIT, HONOLULU DIVISION
	)	
	)	HON. FRANCIS I. YAMASHITA
Respondent-Appellee.	)	Judge
	)	

OPENING BRIEF OF PETITIONER-APPELLANT

STATEMENT OF RELATED CASES

APPENDICES "A" THROUGH "G"

and

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	)	Judge
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OPENING BRIEF OF PETITIONER-APPELLANT

I.

JURISDICTION

Petitioner-Appellant JETON LEE ALLEN (hereinafter referred to as "Appellant") was arrested on August 13, 1991 for driving under the influence of intoxicating liquor. Pursuant to Section 286-255 of the *Hawaii Revised Statutes (H.R.S.)*, the arresting officer took possession of Appellant's driver's license

and issued him a thirty (30) day temporary permit along with a notice of administrative revocation. The administrative revocation of Appellant's license was subsequently affirmed by the director of the Administrative Driver License Revocation Office of the Judiciary (hereinafter the "ADLRO"), on review of the revocation and the ensuant hearing held thereon, and thereafter by a judge of the District Court, who conducted a Judicial Review of Appellant's administrative driver's license revocation, pursuant to Section 286-260, *H.R.S.* (See Judgement On Appeal, filed December 20, 1991, Record on Appeal ("RA") at 88).

Appellant filed a timely Notice of Appeal on January 17, 1992 (RA at 90-99), and the Record on Appeal ("RA") was filed on February 26, 1992. This Opening Brief is timely filed, having been filed on or

before April 6, 1992. This appeal is brought pursuant to Section 641-1, *H.R.S.*, and Rule 3 of the *Hawaii Rules of Appellate Procedure*. Pursuant to Sections 602-5 and 602-57, *H.R.S.*, this Court and the Intermediate Court of Appeals are vested with the jurisdictional authority to hear this appeal.

II.

STATEMENT OF THE CASE

Appellant was arrested on August 14, 1991, for driving under the influence of intoxicating liquor in violation of Section 291-4, *H.R.S.* and was, at that time and in accordance with Section 286-255, *H.R.S.*, issued a Notice of License Revocation and a temporary (thirty (30) day) driving permit by the arresting officer (Notice Of License Revocation / RA at ___.). Pursuant to Section 286-258, *H.R.S.*, the director of the ADLRO issued a Notice of Administrative Review Decision

on August 20, 1991, sustaining the revocation of Appellant's license for a period of ninety (90) days (Notice Of Administrative Hearing Decision dated August 20, 1991 / RA at ___.). In rendering this decision, the director did not consider the complete police report, relative to Appellant's case, as is required under Section 286-258(c)(3), *H.R.S.*, simply, because this had not been provided by the arresting officer, as is mandatory under Section 286-257(a)(1), *H.R.S., and was, therefore, never made a part of the record (Record on Appeal from Administrative Driver's License Revocation Office/RA at 10-42.)*.

Under the auspices of Section 286-258, *H.R.S.*, Appellant, on his own behalf, filed a request for an administrative review of the director's decision to sustain the aforedescribed license revocation, however, Appellant failed to

file his request in a timely manner which resulted in the scheduling of his requested hearing six (6) days after the expiration of his temporary permit. The hearing have been scheduled to take place on September 20, 1991 and the date of the expiration of Appellant's temporary permit having fallen on September 14, 1991 (Decision and Order Affirming Administrative Revocation/ RA at 84-85.).

The administrative hearing of Appellant's case was held as scheduled, with Appellant appearing without counsel. Despite the Administrative hearings officer's assertions to the contrary (Transcript of Proceedings dated September 20, 1991 (hereinafter referred to as "TR of 9/20/91") at 2 and 3), the record included at the hearing was incomplete due to the aforedescribed absence of the complete police report. Subsequent to the administrative hearing of Appellant's

case, the director of the ADLRO, through the agency of the hearings officer, filed a Notice Of Administrative Hearing Decision sustaining the revocation of Appellant's license (Notice Of Administrative Hearing Decision dated September 25, 1991/ RA at ___.).

Upon receipt of the aforedescribed decision, Appellant retained counsel and filed a Petition for Judicial Review of the administrative revocation of his license, as provided for under Section 286-260, *H.R.S.*; said petition having been filed along with a Request For Transcripts and Order For Certification and Transmission Of The Record on October 24, 1991 (RA at 1-7).

Appellant was statutorily prohibited from obtaining a stay of the administrative revocation of his license, pending Judicial Review of same. Section 286-260(a), *H.R.S.* There is no statutory

requirement limiting the time within which such a judicial review must take place.

As a direct result of the ADLRO's inability to transmit the Record on Appeal in a timely fashion, Appellant was forced to seek two (2) continuances to extend the time for the ADLRO to transmit the record to the District Court from November 8, 1991 to November 19, 1991 (RA at 8 and 9.); said record having been filed on November 18, 1991 (RA at Index, page 3.).

Included with the record transmitted by the ADLRO to the District Court was the Transcript of the administrative hearing on Appellant's revocation (TR of 9/20/91). This transcript was never certified and was not prepared by a Court Reporter, but instead, was allegedly transcribed by Michele Ching, a secretary to the director of the ADLRO and an employee of the ADLRO (TR of 9/20/91 at face page and 7).

On November 25, 1991 and November 27,

1991, Appellant filed his brief for the Judicial Review and a Motion to Disqualify All Judges of the District Court from conducting a Judicial Review of his case, respectively (RA at 52 and 62.). The Judicial Review of Appellant's case was heard in the District Court on December 2, 1991 (RA at 82.). This Judicial Review afforded Appellant the first opportunity to present his constitutional claims, hence, this review entailed a re-examination of the record and a "de novo" review of the constitutional issues peculiar to Appellant's case. The reviewing court denied the aforementioned motion on December 12, 1991 (RA at 77.) and affirmed the revocation of Appellant's driver's license on December 20, 1991 (RA at 81.).

On January 17, 1992, Appellant filed his Notice Of Appeal (RA at 90.), and the Record On Appeal hereon was filed with the

clerk of the State Supreme Court on February 26, 1992 (RA at face page.).

Appendix "G"

NOS. 15905,
15906, & 15908

IN THE SUPREME COURT

OF THE

STATE OF HAWAII

PAUL STEWART, Petitioner-Appellant, vs. IRWIN TANAKA, Administrative Director of the Court, State of Hawaii, Respondent-Appellee.	SUPREME COURT NO. 15905 CASE NO. AR91-00477 APPEAL FROM THE JUDGMENT FILED DECEMBER 20, 1991 DISTRICT COURT OF THE FIRST CIRCUIT, HONOLULU DIVISION HON. FRANCIS I. YAMASHITA JUDGE
JETON LEE ALLEN, Petitioner-Appellant, vs. IRWIN TANAKA, Administrative Director of the Court, State of Hawaii, Respondent-Appellee.	SUPREME COURT NO. 15906 CASE NO. AR91-00201 APPEAL FROM THE JUDGMENT FILED DECEMBER 20, 1991 DISTRICT COURT OF THE FIRST CIRCUIT, HONOLULU DIVISION HON. FRANCIS I. YAMASHITA Judge

CHARLES D. KERNAN,	)	S.C. NO. 15908
Petitioner-Appellant,	)	Original Case No. AR91-00174
vs.	)	APPEAL FROM THE JUDGMENT FILED DECEMBER 20, 1991
IRWIN TANAKA, Administrative Director of the Court, State of Hawaii,	)	DISTRICT COURT OF THE FIRST CIRCUIT, HONOLULU DIVISION
Respondent-Appellee.	)	HON. FRANCIS I. YAMASHITA Judge

JUDGMENT ON APPEAL

Pursuant to the Opinion of the Supreme Court of the State of Hawaii entered on august 9, 1993, the Judgments of the district court entered on December 20, 1993 are affirmed.

DATED: Honolulu, Hawaii,

August 26, 1993

BY THE COURT:

/s/ Sandra N. Yasui
CLERK

APPROVED:

/s/ Robert G. Klein
ASSOCIATE JUSTICE